

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEBBIE WALTERS AND	)	
MAX WALTERS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:01-mc-300 (JDB/DAR)
	)	
THE PEOPLE’S REPUBLIC	)	
OF CHINA,	)	
	)	
Defendant.	)	
_____	)	

SUPPLEMENT TO THE UNITED STATES’ STATEMENT OF INTEREST

The United States previously filed a Statement of Interest in this case addressing, in part, the proper scope of post-judgment discovery against foreign sovereigns. *See* ECF No. 9 at 5-7. In a Minute Order dated October 26, 2012, the Court requested the United States’ further views on this issue in light of a Notice of New Relevant Authority filed by Plaintiffs, *see* ECF No. 13 (attaching *EM Ltd. v. Republic of Argentina*, 695 F.3d 201 (2d Cir. 2012)). Pursuant to 28 U.S.C. § 517, the United States—acting as a non-party to this litigation and in support of its own interests—hereby submits its further views for the Court’s consideration.* Specifically, the *EM Ltd.* opinion submitted by Plaintiffs does not alter the United States’ views on post-judgment discovery against foreign sovereigns, nor does it support Plaintiffs’ requested discovery here.

* 28 U.S.C. § 517 vests the Attorney General with discretion over how and when to protect the United States’ interests in litigation: “The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.” This statute provides a mechanism for the United States to submit its views in cases in which the United States is not a party. *See, e.g., Application of Blondin v. Dubois*, 78 F. Supp. 2d 283, 288 n.4 (S.D.N.Y. 2000).

For the reasons set forth in the prior Statement of Interest, the United States' position continues to be that "broad, general-asset discovery is inconsistent with the [Foreign Sovereign Immunities Act], under which discovery should be ordered circumspectly and only to verify allegations of specific facts crucial to an immunity determination." ECF No. 9 at 5 (internal quotation marks omitted). The United States recently explained this position in greater detail in a filing before the Supreme Court, opposing *certiorari* in a case where the Seventh Circuit essentially adopted the United States' views on the proper scope of post-judgment discovery against foreign states. See Brief of the United States as Amicus Curiae, *Rubin v. Islamic Republic of Iran*, cert. denied 2012 WL 2368717 (June 25, 2012) (No. 11-431), available at 2012 WL 1891593 and <http://www.justice.gov/osg/briefs/2011/2pet/6invit/2011-0431.pet.ami.inv.pdf>. Nothing in the *EM Ltd.* decision alters the United States' position on this issue.

Moreover, Plaintiffs are incorrect to state that the *EM Ltd.* decision supports their attempt to "take broad, general-asset discovery following entry of a judgment against a foreign sovereign[.]" ECF No. 13 at 1. For one thing, that decision is from an appellate court, which held only that the discovery order at issue was not an abuse of the district court's discretion. *EM Ltd.*, 695 F.3d at 207 (reviewing the district court's discovery order only for an abuse of discretion). That decision necessarily says nothing about how a district court, acting in the first instance, ought to decide these issues.

More fundamentally, in *EM Ltd.* the Second Circuit repeatedly stressed that "Argentina's sovereign immunity is not infringed" because the underlying discovery order was "directed at third-party banks, not at Argentina itself[.]" 695 F.3d at 205. Indeed, this fact was a "principal reason" for the court's holding:

The second principal reason for holding that the Discovery Order does not infringe on Argentina's sovereign immunity is that the subpoenas at issue were directed at [Bank of America and Banco de la Nación Argentina]—commercial banks that have no claim to sovereign immunity, or to any other sort of immunity or privilege. Thus, the banks' compliance with subpoenas will cause Argentina no burden and no expense.

Id. at 210. Here, by contrast, Plaintiffs seek to take broad general-asset discovery against the People's Republic of China itself. *See* ECF No. 4. Plaintiffs' broad-ranging discovery would almost certainly impose "burden and . . . expense" on China to respond. *EM Ltd.*, 695 F.3d at 210. Contrary to Plaintiffs' suggestion, therefore, the *EM Ltd.* decision does not support their requested discovery here.

Accordingly, the United States continues to respectfully suggest that the Court should permit only narrow and circumspect post-judgment discovery against foreign states.

Dated: November 9, 2012

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on November 9, 2012, a copy of the foregoing document was served upon counsel of record by electronic means through electronic filing:

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